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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CENTRAL FREIGHT LINES, INC.,

11 Plaintiff,

12 v.

13 AMAZON FULFILLMENT
14 SERVICES, INC.,

15 Defendant.

CASE NO. C17-0814JLR

ORDER ON PLAINTIFF'S
MOTIONS FOR PREJUDGMENT
INTEREST AND ATTORNEY'S
FEES

16 **I. INTRODUCTION**

17 Before the court are (1) Plaintiff Central Freight Lines, Inc.'s ("CFL") motion for
18 attorney's fees (Fees Mot. (Dkt. # 285); *see also* Fees Mot. Reply (Dkt. # 307)); and
19 (2) CFL's motion to alter or amend the judgment to include prejudgment interest (Interest
20 Mot. (Dkt. # 283); *see also* Interest Mot. Reply (Dkt. # 299)). Defendant Amazon
21 Fulfillment Services, Inc. ("AFS") filed responses to the motions. (*See* AFS Resp. to
22 Fees Mot. (Dkt. # 300); AFS Resp. to Interest Mot. (Dkt. # 291).) The court has

1 reviewed CFL's motions, the parties' submissions in support of and in opposition to the
2 motions, the relevant portions of the record, and the applicable law. Being fully advised,¹
3 the court DENIES CFL's motion for attorney's fees and GRANTS in part and DENIES
4 in part CFL's motion to amend or alter the judgment to include prejudgment interest.

5 **II. BACKGROUND**

6 The facts of this case have been detailed in several prior orders. (*See, e.g.*, MSJ
7 Order (Dkt. # 214) at 2-17.) Therefore, the court provides only a brief summary of the
8 facts relevant to the present motions.

9 This case arises from a contract dispute between CFL, a freight carrier, and AFS.
10 (*See generally* FAC (Dkt. # 139).) AFS, which is a subsidiary of Amazon.com, Inc.,
11 arranges inbound transportation of merchandise from vendors to Amazon Fulfillment
12 Centers. (CFL MSJ Resp. (Dkt. ## 156 (redacted), 166 (sealed)) at 12.) CFL provided
13 shipping services to AFS pursuant to a Transportation Agreement executed on July 7,
14 2011. (FAC ¶¶ 13-14, Ex. A ("Agreement").) The Agreement adopts and applies
15 CzarLite, a third-party freight rating system, for pricing and shipments, including
16 CzarLite's discount for less-than-truckload ("LTL") shipments. (*See id.* at 13.) After
17 CFL complained to AFS that it was losing money on shipments that required more than
18 eight pallet spaces ("9+ pallet shipments"), the parties orally modified the Agreement to
19 allow CFL to apply volume rates calculated by its spot-quote system to 9+ pallet

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21 ¹ Neither party requests oral argument (*see* Fees Mot. at 1; Interest Mot. at 1; AFS Resp.
22 to Fee Mot. at 1; AFS Resp. to Interest Mot. at 1), and the court finds oral argument would not be
helpful to its disposition of the motions, *see* Local Civil Rules W.D. Wash. LCR 7(b)(4).

1 shipments. (*See* MSJ Order at 27, 32.) After AFS withheld payments from CFL for
2 shipments that CFL completed to offset alleged overcharges for prior shipments, this
3 litigation ensued. (*See id.* at 16-17.) CFL claimed that AFS breached the Agreement by
4 withholding payment for those shipments, and AFS counterclaimed, alleging that CFL
5 overcharged AFS. (*See* FAC ¶¶ 132-37 (alleging that AFS “[w]rongfully with[held]
6 payments as purported set-off to the amounts it wrongfully claimed it overpaid” to CFL);
7 Answer and Counterclaim (Dkt. # 48) ¶¶ 40-45.)

8 After a trial, the jury rendered a verdict finding AFS liable for breach of contract;
9 determining that AFS’ breach caused CFL \$2,472,227.10 in damages; and finding CFL
10 not liable on AFS’ counterclaim. (*See* Verdict Form (Dkt. # 280) at 2.)

11 III. ANALYSIS

12 A. CFL’s Motion for Attorney’s Fees

13 The Agreement does not include an attorney’s fees provision. (*See generally*
14 Agreement.) Nevertheless, CFL argues that it is entitled to attorney’s fees based on
15 AFS’s bad faith conduct both before and during this litigation. (*See* Fees Mot. at 2-3.)
16 CFL bases its motion on an exception to the American Rule² under Washington law that
17 allows fee awards for bad faith conduct. (*See id.*) AFS responds that CFL is not entitled
18 to attorney’s fees because (1) the Federal Aviation Administration Authorization Act of
19 1994 (“FAAAA”) preempts any Washington law-based fee award (*see* AFS Resp. to Fees
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21 ² Under the American Rule, a prevailing party does not recover its attorney’s fees absent
22 a contract, statute, or recognized ground of equity. *See Rorvig v. Douglas*, 873 P.2d 492, 497
(Wash. 1994).

1 Mot. at 3-7 (citing 49 U.S.C. § 14501(c)); (2) even if Washington law applies, bad faith
2 based on pre-litigation conduct is not a recognized ground for attorney's fees under
3 Washington law (*see id.* at 7-9); and (3) AFS's conduct did not rise to the level of bad
4 faith (*see id.* at 9-14).

5 Although CFL relies exclusively on Washington law (*see Fees Mot.* at 2-3),
6 Washington law does not apply to the entirety of CFL's fee request. In federal diversity
7 actions, district courts may award attorney's fees under state law when they are part of
8 the state's substantive, rather than procedural, requirements. *See In re Larry's*
9 *Apartment, L.L.C.*, 249 F.3d 832, 838 (9th Cir. 2001). "However, when fees are based
10 upon misconduct by an attorney or party in the litigation itself, rather than upon a matter
11 of substantive law, the matter is procedural," and federal law applies. *See id.* (citing
12 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 53 (1991)), and quoting *People by Abrams v.*
13 *Terry*, 45 F.3d 17, 23 (2d Cir. 1995) ("[I]t is quite anomalous to suggest that a federal
14 court must look to the . . . state legislature to vindicate an abuse of the federal judicial
15 power.").³ Accordingly, the court first analyzes whether Washington State substantive
16 law allows an award of fees for AFS's pre-litigation conduct before applying federal
17 procedural law to CFL's request for fees based on AFS's conduct during this litigation.

18 1. Fees for Pre-Litigation Conduct Under Washington Law

19 As a general matter, Washington State follows the American Rule, under which
20 each side pays its own attorney's fees regardless of who prevails, and rejects punitive

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22 ³ A district court's inherent authority to sanction parties for their litigation conduct
applies with equal force in diversity actions. *See Chambers*, 501 U.S. at 35, 52.

1 damages. *See Dempere v. Nelson*, 886 P.2d 219, 222 (Wash. Ct. App. 1994), *overruled*
2 *on separate grounds by Burnet v. Spokane Ambulance*, 933 P.2d 1036 (1997)).⁴
3 Nevertheless, a court may award attorney’s fees if authorized by contract, statute, or a
4 recognized ground in equity. *See id.* at 220 (internal quotations and citations omitted).
5 Here, it is undisputed that the Agreement does not contain a fees provision. (*See*
6 *generally* Agreement.) Further, CFL does not point to any Washington statute entitling it
7 to fees. (*See generally* Fees Mot.) Thus, CFL relies on the final ground upon which
8 Washington law may allow an award of fees, “a recognized ground in equity.” *See*
9 *Dempere*, 886 P.2d at 220.

10 Like the federal courts, Washington courts have “inherent equitable powers” to
11 “authorize the award of attorney fees in cases of bad faith.” *Matter of Pearsall-Stipek*,
12 961 P.2d 343, 349 (Wash. 1998), *as amended* (Oct. 17, 2000). Although Washington
13 courts often describe these “inherent equitable powers” in terms similar to those used by
14 federal courts, *see, e.g., Chambers*, 501 U.S. at 53, the scope of Washington State courts’
15 equitable power to award bad-faith attorney’s fees is not clearly defined. *See Rogerson*
16 *Hiller Corp. v. Port of Port Angeles*, 982 P.2d 131, 135 (Wash. Ct. App. 1999)
17 (“Although a number of cases have questioned the existence of bad faith as a basis of an
18 attorney’s fee award, the Washington Supreme Court has recently confirmed that ‘bad

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22 ⁴ The court in *Deutscher v. Gabel*, 202 P.3d 355, 366 (Wash. Ct. App. 2009), recognized
Burnet’s overruling of *Dempere* on separate grounds.

1 faith litigation can warrant the equitable award of attorney fees.’ . . . But Washington
2 case law provides little precedent for what constitutes bad faith.’”).⁵

3 Nevertheless, several Washington courts have determined that “it is bad faith in
4 the conduct of litigation,” not prelitigation misconduct, “which may warrant an award of
5 attorney fees.” *Dempere*, 886 P.2d at 221 (comparing fee awards based on prelitigation
6 misconduct to punitive damages, which Washington law does not recognize); *see also*
7 *Maytown Sand & Gravel, LLC v. Thurston Cty.*, 423 P.3d 223, 250 (2018), *as amended*
8 (Oct. 1, 2018) (holding that sanctioning parties for “prelitigation conduct that occurred
9 before the court was involved and before litigation was initiated” exceeds the scope of
10 Washington courts’ inherent authority to award bad faith attorney’s fees, because “harm
11 caused by malicious, prelitigation conduct fits more naturally within the meaning of
12 damages and is therefore limited to that context”), *overruled on other grounds by Yim v.*
13 *City of Seattle*, 451 P.3d 694 (Wash. 2019); *see also Maytown Sand & Gravel, LLC*, 423
14 P.3d at 250 (“Washington limits the situations in which such prelitigation attorney fees
15 can be recovered as damages.”).

16 CFL seizes on a sentence in *Rorvig v. Douglas*, 873 P.2d 492, 497 (Wash. 1994),
17 to argue that Washington’s bad faith exception to the American Rule applies to AFS’s

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19 ⁵ As an example of the sometimes-confusing nature of the Washington law bad faith
20 exception, one Washington case describes intentionally bringing a frivolous claim with an
21 improper motive as a form of “[s]ubstantive bad faith,” whereas federal case law describes the
22 same conduct as a matter of procedural law. *Compare Rogerson Hiller Corp.*, 982 P.2d at 136
(describing “[s]ubstantive bad faith”), with *Chambers*, 501 U.S. at 53 (“However, when fees are
based upon misconduct by an attorney or party in the litigation itself, rather than upon a matter of
substantive law, the matter is procedural.”).

1 prelitigation conduct. (*See* Fees Mot. at 3.) In that case, the Supreme Court of
2 Washington recognized that attorney’s fees may be recovered as special damages for
3 prelitigation misconduct in certain circumstances, including in malicious prosecution and
4 wrongful attachment or garnishment actions. *See Rorvig*, 873 P.2d at 497. In doing so,
5 the court held that these special damages extend to slander of title actions, because in
6 those actions, “[i]t is the defendant who by intentional and calculated action leaves the
7 plaintiff with only one course of action: that is, litigation.” *See id.* In these limited types
8 of cases, Washington law extends attorney’s fees as special damages because “actual
9 damages are difficult to establish” and thus “[f]airness requires the plaintiff to have some
10 recourse against the intentional malicious acts of the defendants.” *See id.*

11 CFL contends that *Rorvig* allows fees for AFS’s prelitigation conduct because
12 AFS left CFL with no choice but to litigate. (*See* Fees Mot. at 3.) However, Washington
13 courts have limited *Rorvig* to specific types of claims that do not include breach of
14 contract. *See Campbell v. McClelland*, 112 Wash. App. 1005, 2002 WL 1279903, at *1
15 (Wash. Ct. App. 2002) (unpublished) (declining to award fees based on prelitigation
16 conduct to a case based on a restrictive covenant because to take “that language [in
17 *Rorvig*] literally would destroy the American Rule of attorney fees in every intentional
18 tort case and every intentional breach of contract case”); *see also Dempere*, 886 P.2d at
19 222 (“Consequently, we hold that bad faith in the underlying tortious conduct is not a
20 recognized equitable ground for awards of attorney fees in Washington.”).

21 CFL cites no case, and the court is aware of none, in which a Washington court
22 has applied *Rorvig* to award attorney’s fees based on prelitigation conduct in a breach of

1 contract case. (*See generally* Fees Mot.) One Washington case that CFL relies on
2 discusses “prelitigation misconduct” in dicta but does not cite to any Washington case
3 that stands for the proposition that Washington law allows attorney’s fees based on
4 prelitigation conduct that is connected to the underlying merits of the case. (*See* Fees
5 Mot. at 3 (citing *Rogerson Hiller Corp.*, 982 P.2d at 136).) CFL also relies on *Hsu Ying*
6 *Li v. Tang*, 557 P.2d 342 (Wash. 1976). (*See* CFL Reply to Fees Mot. at 6.) Yet, the *Hsu*
7 *Ying Li* court concluded that the “bad faith” exception did “not apply . . . as the trial court
8 did not find any bad faith conduct,” and instead awarded fees based upon the defendant’s
9 constructive fraud. *See Hsu Ying Li*, 557 P.2d at 344. Finally, CFL relies on *Gunn v.*
10 *Riely*, 200 Wash. App. 1039 (2017) (unpublished), but that case involved a quiet title
11 action, one of the types of cases in which such fees are allowed under *Rorvig*. (*See* CFL
12 Reply to Fees Mot. at 7.) Moreover, the purpose of awarding fees for prelitigation bad
13 faith conduct as described by *Rorvig* does not apply to breach of contract cases like this
14 one, because unlike slander or quiet title actions, damages are not generally “difficult to
15 establish” in breach of contract cases. *See Rorvig*, 873 P.2d at 497.

16 Based on the foregoing authorities, the court concludes that Washington State
17 substantive law does not allow for attorney’s fees based on bad faith prelitigation conduct
18 in breach of contract cases. Therefore, the court need not address AFS’s arguments that
19 the FAAAA preempts Washington law (*see* AFS Resp. to Fees Mot. at 3-7) or CFL’s
20 responses to those arguments (*see* CFL Reply to Fees Mot. at 2-5).

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1 2. Fees for AFS's Litigation Conduct Under Federal Law

2 Having determined that Washington State substantive law does not allow
3 attorney's fees for AFS's prelitigation conduct, the court next applies the applicable
4 federal law to the portion of CFL's fee request based on AFS's conduct during this
5 litigation. CFL focuses primarily on AFS's prelitigation conduct and spills little ink on
6 AFS's conduct throughout this litigation, but argues that "AFS asserted positions that it
7 *knew* were false, both before and after the commencement of this litigation." (*See Fees*
8 *Mot. at 2.*)

9 District courts may award sanctions in the form of attorney's fees under their
10 inherent equitable powers if the court finds bad faith or "conduct tantamount to bad
11 faith." *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1108 (9th Cir. 2002) (quoting *Fink v.*
12 *Gomez*, 239 F.3d 989, 994 (9th Cir. 2001)) (internal quotation marks omitted).
13 "Sanctions are available for a variety of types of willful actions, including recklessness
14 when combined with an additional factor such as frivolousness, harassment, or an
15 improper purpose." *Id.* (quoting *Fink*, 239 F.3d at 994) (internal quotation marks
16 omitted). The decision to impose sanctions rests in the sound discretion of the district
17 court. *See Air Separation v. Underwriters at Lloyd's of London*, 45 F.3d 288, 291 (9th
18 Cir. 1994).

19 Inherent powers must be used only with restraint and discretion. *Leon v. IDX Sys.*
20 *Corp.*, No. C03-1158 P, 2004 WL 5571412, at *3 (W.D. Wash. Sept. 30, 2004), *aff'd*,
21 464 F.3d 951 (9th Cir. 2006) (citing *Chambers*, 501 U.S. at 44). If conduct can be
22 sanctioned adequately under existing rules, a court ordinarily should rely on the rules

1 rather than on inherent power to impose sanctions. *Herrera v. Singh*, 103 F. Supp. 2d
2 1244, 1256 (E.D. Wash. 2000) (citing *Chambers*, 501 U.S. at 50). However, “if in the
3 informed discretion of the court, neither the statute nor the rules are up to the task, the
4 court may safely rely on its inherent power.” *Chambers*, 501 U.S. at 50.

5 The court’s inherent power to sanction bad-faith conduct is based “not on which
6 party wins the lawsuit, but on how the parties conduct themselves during the litigation.”
7 *See id.* at 53. “Sanctions are available for a variety of types of willful actions, including
8 recklessness when combined with an additional factor such as frivolousness, harassment,
9 or an improper purpose.” *B.K.B.*, 276 F.3d at 1108 (quoting *Fink*, 239 F.3d at 994)
10 (internal quotation marks omitted).

11 CFL does not seek sanctions under either Federal Rule of Civil Procedure 11, 28
12 U.S.C. § 1297, or any other federal rule or statute. (*See generally* Fees Mot.) To support
13 an award of fees under Rule 11, AFS must be given notice and an opportunity to respond.
14 *See* Fed. R. Civ. P. 11(c)(1). AFS did not have such notice here because CFL did not
15 seek relief under Rule 11. (*See generally* Fees Mot.) To support an award of fees under
16 28 U.S.C. § 1927, AFS must have acted in subjective bad faith, which is present if AFS
17 “knowingly or recklessly raise[d] a frivolous argument, or argue[d] a meritorious claim
18 for the purpose of harassing an opponent.” *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d
19 431, 436 (9th Cir. 1996). This standard is similar to the standard the Ninth Circuit
20 applies to requests for fees under the court’s inherent authority. *See B.K.B.*, 276 F.3d at
21 1108.

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1 The court concludes that an award of attorney’s fees is not justified here. CFL
2 does not point to any failure by AFS to disobey court orders or otherwise disrupt or delay
3 court proceedings. (*See generally* Fees Mot.) Instead, CFL asserts that AFS “continu[ed]
4 to assert positions it knew to be untrue throughout the litigation.” (*See id.* at 3.)
5 Although the court granted partial summary judgment in favor of CFL (*see* MSJ Order at
6 65-66), and CFL ultimately prevailed at trial on its breach of contract claim against AFS
7 (*see* Verdict Form at 2), the court does not conclude from the evidence before it that
8 AFS’s litigation positions were frivolous, reckless, or for the purpose of harassing CFL.
9 CFL prevailed in part based on a contract modification that the court determined existed
10 on summary judgment only after a full period of discovery. (*See* MSJ Order at 27.)
11 AFS’s remaining positions, including that the parties did not enter a settlement agreement
12 to resolve a dispute over master bills of lading (“MBOL”) (*see id.* at 56), that CFL was
13 required to include valid Tender IDs on its invoices to AFS (*see id.* at 41), and that CFL
14 was required to submit a master bill of lading for same day/same origin/same destination
15 shipments (*see id.* at 39), all involved genuine disputes of material fact that required a
16 jury trial to resolve.⁶ Therefore, the court DENIES CFL’s motion for attorney’s fees.

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19 ⁶ To be sure, the court does not condone all of AFS’s trial strategy, which included taking
20 new litigation positions on the eve of and during the trial. (*See* 2/21/20 Order at 12 (discussing
21 the court’s rejection of AFS’s new theory that the parties’ modification included a condition
22 precedent) *id.* at 26-29 (discussing AFS’s proposal and subsequent rejection of “setoff” language
in the jury instructions).) However, CFL does not discuss these positions in its motion for
attorney’s fees, and the court does not find they rise to a level that warrants sanctions. (*See*
generally Fees Mot.)

1 **B. CFL’s Motion for Prejudgment Interest**

2 CFL moves to amend or alter the judgment to include prejudgment interest at the
3 Washington State statutory rate of 12% per annum. (*See* Interest Mot. at 2 (citing *U.S.*
4 *Fid. & Guar. Co. v. Lee Investments, LLC*, 641 F.3d 1126, 1139 (9th Cir. 2011);
5 *Mutuelles Unies v. Kroll & Linstrom*, 957 F.2d 707, 714 (9th Cir. 1992) (“In diversity
6 jurisdiction, state law governs all awards of pre-judgment interest.”)).)

7 Although AFS agrees that state law generally provides the applicable prejudgment
8 interest rate, AFS responds that 49 U.S.C. § 14501(c) of the FAAAA preempts the
9 application of a state law interest rate in this case, and therefore the 52-week U.S.
10 Treasury bill rate should apply. (*See* AFS Resp. to Interest Mot. at 8-13.) AFS also takes
11 issue with CFL’s proposed interest calculations. (*See id.* at 4-7.) The court addresses
12 AFS’s preemption argument before determining the proper prejudgment interest award in
13 this case.

14 1. Preemption

15 “In diversity actions brought in federal court a prevailing plaintiff is entitled to
16 pre-judgment interest at state law rates” *Onink v. Cardelucci*, 285 F.3d 1231, 1235
17 (9th Cir. 2002); *Northrop Corp. v. Triad Int’l Mktg., S.A.*, 842 F.2d 1154, 1155 (9th Cir.
18 1988) (“The recognized general rule is that state law determines the rate of prejudgment
19 interest in diversity actions. . . . The general rule has been followed in this circuit.”)
20 (citations omitted). Because the Agreement does not specify an applicable rate, CFL
21 seeks the 12% per annum rate allowed by RCW 4.56.110(6) and RCW 19.52.020(1).
22 (*See* Interest Mot. at 2.)

1 AFS contends that 49 U.S.C. § 14501(c) of the FAAAA preempts the application
2 of a state law interest rate because this case relates to a motor carrier and therefore the
3 52-week U.S. Treasury bill rate should apply. (*See* AFS Resp. to Interest Mot. at 8-13.)
4 Section 14501(c)(1) provides, in relevant part:

5 Except as provided in paragraphs (2) and (3), a State, political subdivision of
6 a State, or political authority of 2 or more States may not enact or enforce a
7 law, regulation, or other provision having the force and effect of law related
8 to a price, route, or service of any motor carrier (other than a carrier affiliated
with a direct air carrier covered by section 41713(b)(4)) or any motor private
carrier, broker, or freight forwarder with respect to the transportation of
property.

9 49 U.S.C. § 14501(c)(1).

10 An exception under the FAAAA allows the adjudication of state-law-based claims
11 for breach of motor carrier-related contract claims, as long as there is “no enlargement or
12 enhancement [of the contract] based on state laws or policies external to the agreement.”
13 *See Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232-33 (1995). AFS relies on cases
14 holding that the FAAAA preempts state laws allowing punitive damages and state-law
15 based attorney’s fees to argue that the FAAAA similarly preempts the application of
16 Washington statutes providing 12% per annum interest in cases relating to motor carriers.
17 (*See* AFS Resp. to Interest Mot. at 10-11 (citing *Travel All Over the World, Inc. v.*
18 *Kingdom of Saudi Arabia*, 73 F.3d 1423, 1432 n.8 (7th Cir. 1996) (holding that the
19 FAAAA preempts state law punitive damages because they represent an enlargement or
20 enhancement of the parties’ bargain); *ATA Airlines, Inc. v. Fed. Express Corp.*, No.
21 1:08-cv-00785, 2010 WL 1754164, at *4 (S.D. Ind. Apr. 21, 2010) (holding that the
22 FAAAA similarly preempts state law-based attorney’s fees)).) AFS cites only one case

1 that mentions state-law-based prejudgment interest in relation to the FAAAA. (See AFS
2 Resp. to Interest Mot. at 11 (citing *Manassas Travel, Inc. v. Worldspan, L.P.*,
3 2:07-CV-701-TC, 2008 WL 1925135, at *2 (D. Utah April 30, 2008)). However, the
4 portion of *Manassas Travel* that AFS cites simply recites a party's argument that to the
5 extent the opposing party "is seeking extra-contractual relief, such as attorneys' fees,
6 exemplary damages and interest, the ADA preempts such relief." See *Manassas Travel*,
7 *Inc.*, at *2. The court did not ultimately adopt this position and reserved ruling on the
8 issue. See *id.*

9 AFS cites to no case in which a court has held that the FAAAA preempts the
10 application of state-law-based prejudgment interest in diversity breach of contract cases.
11 (See generally AFS Resp. to Interest Mot.) On the other hand, at least one Ninth Circuit
12 case has affirmed a district court's award of Washington law-based prejudgment interest
13 in a contract-based diversity action involving a motor carrier. See *Oak Harbor Freight*
14 *Lines, Inc. v. Sears Roebuck, & Co.*, 513 F.3d 949, 961-62 (9th Cir. 2008); see also *In re*
15 *Exxon Valdez*, 484 F.3d 1098, 1101 (9th Cir. 2007). Further, the cases upon which AFS
16 relies that hold that FAAAA preempts state-law-based punitive damages and attorney's
17 fees are distinguishable from cases awarding prejudgment interest. Unlike punitive
18 damages and fees, prejudgment interest does not enlarge or enhance what was owed, but
19 rather is "necessary in the ordinary case to compensate a plaintiff fully for a loss suffered
20 at time t and not compensated until $t + 1$." See *Hopi Tribe v. Navajo Tribe*, 46 F.3d 908,
21 922 (9th Cir. 1995) (internal quotation marks omitted); see also *Emp. Painters' Tr. v.*
22 *Cascade Coatings*, No. C12-0101JLR, 2014 WL 2893298, at *7 (W.D. Wash. June 25,

1 2014) (“Prejudgment interest is appropriate as a form of compensatory relief, but not as a
2 means of punitive damages”).

3 Based on the foregoing authority, the court concludes that the FAAAA does not
4 preempt the application of RCW 4.56.110(6) and RCW 19.52.020(1) in this case.

5 2. Standard for Prejudgment Interest

6 CFL seeks prejudgment interest on (1) the entire amount of the jury’s verdict for
7 the time period between July 31, 2019, and the verdict date of October 25, 2013; for the
8 “full setoff” amount between May 15, 2017, and May 26, 2017; and for the “full setoff”
9 amount minus \$530,121.21 (totaling \$2,856,602.00) for the time period between May 26,
10 2017, and July 31, 2019, for a total interest amount of \$829,718.39. (*See* Interest Mot. at
11 6.) CFL also includes an “alternative” request for \$727,736.05. (*See id.* at 8.)

12 “A party is entitled to prejudgment interest where the amount due is ‘liquidated.’”
13 *Unigard Ins. Co. v. Mutual of Enumclaw Ins. Co.*, 250 P.3d 121, 128 (Wash. Ct. App.
14 2011) (citing *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 15 P.3d 115, 132 (Wash.
15 2000)). Additionally, courts award prejudgment interest when “the amount of an
16 ‘unliquidated’ claim is for an amount due upon a specific contract for the payment of
17 money and the amount due is determinable by computation with reference to a fixed
18 standard contained in the contract, without reliance on opinion or discretion,” *see*
19 *Maryhill Museum of Fine Arts v. Emil’s Concrete Const. Co.*, 751 P.2d 866, 870 (1988)
20 (quoting *Prier v. Refrigeration Eng’g Co.*, 442 P.2d 621, 626 (Wash. 1968)). A claim is
21 liquidated “where the evidence furnishes data which, if believed, makes it possible to
22 compute the amount with exactness, without reliance on opinion or discretion.” *Egerer v.*

1 CSR W., LLC, 67 P.3d 1128, 1131 (Wash. Ct. App. 2003) (quoting *Prier*, 442 P.2d at
2 626). “[T]he existence of a dispute over part or all of a claim does not change the claim
3 from a liquidated to an unliquidated one. It is the character of the claim and not of the
4 defense that determines the question.” *Prier*, 442 P.2d at 627.

5 AFS raises several objections to CFL’s calculations. (See AFS Resp. to Interest
6 Mot. at 4-7.) AFS contends that CFL improperly seeks interest on an unsupportable sum
7 greater than the jury’s verdict, relies on an arbitrary accrual date, and fails to support its
8 calculations with accurate, invoice-by-invoice due dates and amounts. (See *id.*) The
9 court first addresses the sum to which prejudgment interest properly applies before
10 addressing the proper accrual date.

11 3. Sum to Which Interest Applies

12 The court concludes that the jury’s verdict of \$2,472,227.10 is the proper sum
13 upon which to apply prejudgment interest. (See Verdict Form at 2.) This sum represents
14 the amounts the jury determined AFS withheld from CFL in violation of the Agreement,
15 minus the amount CFL concedes it overcharged AFS. As AFS agrees, the jury appears to
16 have calculated CFL’s damages as follows:

17 (1) The amount AFS failed to pay to set off alleged overcharges on 9+ pallet
18 shipments (\$1,781,158.01); plus

19 (2) The amount AFS failed to pay to set off alleged overcharges on 1-8 pallet
20 shipments (\$634,629.25); plus

21 (3) The MBOL setoff amount (\$431,028.00); plus

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1 (4) The amount AFS failed to pay based on alleged Tender ID defects (\$36,036);
2 plus

3 (5) CFL's payment to AFS in response to AFS's demands on the MBOL issue
4 (\$112,203.52); minus

5 (6) The amount CFL admitted it overcharged AFS for 1-8 pallet shipments
6 (\$522,827.68).

7 (*See* 2/21/20 Order (Dkt. # 309) at 20-21; AFS JMOL Mot. (Dkt. # 286) at 9-10.)

8 Evidence presented to the jury supports the above sums. (*See* 2/21/20 Order at
9 20-23 (analyzing the evidence supporting the jury's damages award).) However, the
10 sums in excess of the jury's verdict upon which CFL seeks interest are not supported. In
11 CFL's first calculation, CFL seeks prejudgment interest on the "full setoff" amount of
12 \$3,386,723.21, a sum that includes \$530,121.21 that AFS reimbursed to CFL on May 26,
13 2017. (*See* Interest Mot. at 6.) CFL does not connect the \$530,121.21 to any set of
14 invoices or provide evidence of when such invoices were due. (*See generally id.*)

15 Because the reimbursed amount could relate to invoices that were not yet due, CFL
16 cannot obtain prejudgment interest on the \$530,121.21 that AFS reimbursed more than
17 two and a half years ago. Further, the "total setoff" amount upon which CFL seeks
18 prejudgment interest is not a proper sum because it fails to account for the \$522,827.68
19 that CFL conceded throughout trial that AFS in fact did not owe to CFL. (*See* 2/21/20
20 Order at 20 (discussing CFL's position that \$522,827.68 should be deducted from its
21 damages award because it overcharged AFS that amount for 1-8 pallet shipments).)

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1 4. Accrual Date

2 Generally, the date an invoice becomes due is the proper accrual date for
3 prejudgment interest. *See Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 15 P.3d 115,
4 133 (Wash. 2000) (“The date those invoices were paid established the proper time
5 interest began to run.”) However, where voluminous separate invoices became due on
6 separate dates, the court may determine a single date from which prejudgment interest
7 accrues. *Oak Harbor Freight Lines, Inc.*, 513 F.3d at 961 (affirming a district court’s
8 adoption of a single prejudgment accrual date as opposed to a separate accrual date for
9 each of the 3,386 freight bills at issue) (citing *Chandler v. Bombardier Capital, Inc.*, 44
10 F.3d 80, 84 (2d Cir. 1994) (holding that the district court did not abuse its discretion in
11 applying, over a longer period of time, a lower interest rate than it otherwise might have
12 applied because the interest was fair and the court avoided “establishing a separate
13 interest figure for each lost monthly payment”)).

14 Here, the Agreement required AFS to pay CFL’s invoices within 60 days of
15 receipt. (*See* Agreement § 2.2.) CFL proposes a May 15, 2017, accrual date for its “full
16 setoff” calculation, and a May 26, 2017, accrual date for its calculation based on the
17 amount of the jury’s verdict. (*See* Interest Mot. at 6, 8.) AFS contends that May 15,
18 2017, is an “arbitrary” accrual date, and that many invoices on which CFL seeks
19 prejudgment interest were not yet due as of that date. (*See* AFS Resp. to Interest Mot. at
20 5-6 (citing Trial Ex. 107).) CFL responds that only 51 of the 23,642 invoices were issued
21 after May 15, 2017. (*See* CFL Reply to Interest Mot. at 2-3.)

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The court adopts the method affirmed by the Ninth Circuit in *Oak Harbor Freight Lines* and sets an accrual date of December 26, 2017, sixty days after the final invoice issue date of October 27, 2017—and therefore the date the final invoice was due—on all portions of the jury’s damages award except for the \$112,203.52 MBOL payment. (*See* Tr. Ex. 107; Am. Answer (Dkt. # 6) ¶ 49.) The parties do not provide evidence of the exact date of that payment, but they agree that AFS received the payment by August 2016. Therefore, the court sets an accrual date of September 1, 2016, for prejudgment interest on the \$112,203.52 MBOL payment.

5. Prejudgment Interest Award

Based on the foregoing analysis, the court awards CFL prejudgment interest as follows:

Date Range	Days	Base Amount	Prejudgment Interest at 12% per annum
December 26, 2017-October 25, 2019	669	\$2,360,023.58	\$519,075.87
September 1, 2016-October 25, 2019	1,150	\$112,203.52	\$42,422.15
Total Prejudgment Interest:			\$561,492.02

IV. CONCLUSION

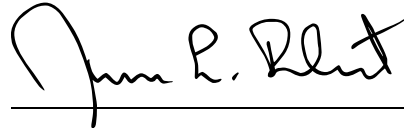
For the reasons set forth above, the court DENIES CFL’s motion for attorney’s fees (Dkt. # 285); GRANTS in part and DENIES in part CFL’s motion to alter or amend

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1 the judgment to include prejudgment interest (Dkt. # 283); and awards CFL \$561,492.02
2 in prejudgment interest. An amended judgment will follow.

3 Dated this 26th day of February, 2020.

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6 JAMES L. ROBART
7 United States District Judge
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